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DEC - 8 1993

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

Before the
Federal Communications Commission
 Washington, D.C. 20554

In re Applications of

FRANK B. DUROSS

KENNETH F. ROSER, JR.

KEVIN O'KANE

For a Construction Permit for
 a New FM Station on Channel 250A,
 at Whitesboro, New York

MM DOCKET NO. 93-264

File No. BPH-920512MC

File No. BPH-920513MI

File No. BPH-920514MK

To: Honorable Joseph P. Gonzalez
 Administrative Law Judge

JOINT REQUEST FOR APPROVAL OF SETTLEMENT AGREEMENT

Frank B. DuRoss ("DuRoss") and Kevin O'Kane ("O'Kane"), applicants in the above-captioned proceedings, by their respective attorneys and pursuant to Section 73.3525 of the Commission's rules, hereby jointly request approval of the Settlement Agreement attached hereto as Exhibit 1.¹ In support whereof, the following is shown:

1. This Joint Request asks that the Commission simultaneously: (a) approve the attached Settlement Agreement (Exhibit 1); and (b) dismiss O'Kane's application with prejudice.

2. Pursuant to the attached Settlement Agreement, O'Kane has agreed to dismiss his above-captioned application in return for monetary consideration to be paid by DuRoss in the amount of \$15,000, should DuRoss' application or the application of an

¹ DuRoss is simultaneously filing this day a "Motion To Dismiss Motion To Enlarge Issues Against O'Kane" seeking to have the pleading filed against O'Kane dismissed as moot.

entity within which Mr. DuRoss holds an interest, be granted the construction permit for the new Whitesboro FM station.

3. In compliance with the terms of Section 73.3525 of the Commission's Rules, DuRoss and O'Kane, at Exhibit 1 attached hereto, submit Declarations under penalty of perjury that they did not file their applications for the purpose of reaching or carrying out a settlement agreement; that approval of the proffered Settlement Agreement would further the public interest; that the above-referenced consideration of \$15,000 is the sole consideration involved; and that O'Kane's legitimate and prudent expenses for the preparation, filing and prosecution of his application were at least \$15,000.²

4. The public interest will be served by a grant of the Settlement Agreement. The Agreement calls for the dismissal of O'Kane's application which will eliminate one of the three remaining applicants for the new Whitesboro facilities, thus simplifying the remainder of the comparative proceeding and expediting the final selection of the new licensee for the Whitesboro FM station.

WHEREFORE, in light of the foregoing, the parties hereto respectfully request approval of the attached Settlement Agreement and dismissal of O'Kane's application with prejudice.

² A facsimile copy of Mr. O'Kane's Declaration is attached. The original of this document will be submitted to the Commission upon its receipt.

Respectfully submitted,

FRANK B. DUROSS

By: 

Arthur V. Belendiuk
Shaun A. Maher

Date: 12/15/93

His Attorneys

SMITHWICK & BELENDIUK, P.C.
1990 M Street, N.W.
Suite 510
Washington, D.C. 20036
(202) 785-2800

KEVIN O'KANE

By: _____

James L. Oyster

Date: _____

Law Offices of James L. Oyster
Rt. 1, Box 203A
Castleton, Virginia 22716
(703) 937-4800

lpd/whitesbo/12-8.jtr

Respectfully submitted,

FRANK B. DUROSS

By: _____

Arthur V. Belendiuk
Shaun A. Maher

Date: _____

His Attorneys

SMITHWICK & BELENDIUK, P.C.
1990 M Street, N.W.
Suite 510
Washington, D.C. 20036
(202) 785-2800

KEVIN O'KANE

By: _____

James L. Oyster

Date: 12/8/93

Law Offices of James L. Oyster
Rt. 1, Box 203A
Castleton, Virginia 22716
(703) 937-4800

EXHIBIT 1

SETTLEMENT AGREEMENT

This AGREEMENT is made and entered into by and between Frank DuRoss ("DuRoss") and Kevin O'Kane ("O'Kane") (collectively "the Parties"), on this 7th day of December, 1993.

WHEREAS, DuRoss has an application pending before the Federal Communications Commission ("Commission") under File No. BPH-920512MC for a construction permit for a new FM broadcast station on Channel 250A at Whitesboro, New York; O'Kane has a pending application under File No. BPH-920514MK for the same facilities; and Kenneth F. Roser ("Roser"), Jr. has a pending application under File No. BPH-920513MI for the same facilities; and

WHEREAS, the DuRoss, O'Kane, and Roser applications are mutually exclusive, and, accordingly, pursuant to the provisions of the Communications Act of 1934, as amended, only one of those applications can be granted; and

WHEREAS, the Parties believe that the public interest will be served by eliminating the conflict between the DuRoss and O'Kane applications, thereby simplifying the remaining comparative proceeding between DuRoss and Roser;

NOW THEREFORE, it is agreed and contracted, by and between DuRoss and O'Kane, in consideration of their promises and undertakings hereinafter set forth, the Parties intending to be legally bound, as follows:

1. This Agreement is subject to the prior approval of the Commission, which approval has become a "Final Order," as defined

in Paragraph 4(c) hereof.

2. In the Joint Request for Approval of Agreement to be filed with the Commission in accordance with Paragraph 5 hereof, DuRoss and O'Kane will request that the Commission simultaneously do the following: approve this agreement and dismiss O'Kane's application. In a "Motion To Dismiss Motion to Enlarge Against O'Kane" to be filed with the Commission simultaneously with the above-referenced Joint Request, DuRoss will request that the pending "Motion To Enlarge Issues" filed against O'Kane on November 18, 1993, be dismissed as moot.

3. In consideration for the dismissal of O'Kane's application, DuRoss shall pay O'Kane the sum of FIFTEEN THOUSAND (\$15,000) DOLLARS, as follows:

a. Within five (5) business days after the release of a Final Order (as defined herein) granting DuRoss' Whitesboro application or the application of any entity within which DuRoss has an interest, DuRoss shall pay the entire settlement amount of FIFTEEN THOUSAND (\$15,000) DOLLARS to O'Kane.

b. Payment shall be made via certified or cashier's check made payable to "Kevin O'Kane" and shall be mailed to Mr. O'Kane's current address.

4. As used in this Agreement, the term "Final Order," shall mean an Order with respect to which the time for any and all requests for reconsideration, review, or appeal, and for the reconsideration or review by the Commission on its own motion, has expired.

5. Within five (5) business days of the execution of this Agreement, the Parties shall file with the Commission this Agreement, together with a joint request for its approval, in accordance with Section 73.3525 of the Commission's rules. Each Party will provide the information and documents pertaining to it which are necessary or appropriate for inclusion in the request for approval of this Agreement. Each Party will promptly submit to the Commission any additional information pertaining to it which, from time to time, may be necessary or appropriate to expeditiously secure an Order by the Commission approving this Agreement, dismissing O'Kane's application with prejudice.

6. DuRoss and O'Kane agree to exercise their best efforts to obtain approval of this Agreement from the Commission, and to undertake any and all steps necessary for the successful prosecution of this Agreement, including the preparation and filing of any information or documentation in support thereof. No Party to this Agreement shall undertake any action to preclude, hinder, or delay the issuance of an Order approving this Agreement, the payments proposed herein and the dismissal of O'Kane's application. However, no Party will be required to file or join in any request for reconsideration, review or appeal of the Order issued by the Commission and/or its delegated authority.

7. The Parties hereto warrant that neither they nor any person associated with them have directly or indirectly paid or promised to pay any Party hereto or any person associated with

such Party any consideration for the withdrawal and dismissal of O'Kane's application, except as expressly recited and disclosed in this Agreement.

8. This Agreement may be signed in counterparts with the same force and effect as if all signatures were upon each counterpart copy.

9. The laws of the State of New York shall govern the construction and enforcement of this Agreement.

In the **WITNESS WHEREOF**, the Parties have executed this Agreement as of the date first above written.

FRANK B. DUROSS

By: 
Frank B. DuRoss

KEVIN O'KANE

By: _____
Kevin O'Kane

12/06/93 17:45 202 745 2804

SMTHWK/BLNDK-DC

0005

such Party any consideration for the withdrawal and dismissal of O'Kane's application, except as expressly recited and disclosed in this Agreement.

8. This Agreement may be signed in counterparts with the same force and effect as if all signatures were upon each counterpart copy.

9. The laws of the State of New York shall govern the construction and enforcement of this Agreement.

In the WITNESS WHEREOF, the Parties have executed this Agreement as of the date first above written.

FRANK B. DUROSS

By: Frank B. DuRoss

KEVIN O'KANE

By: Kevin O'Kane
Kevin O'Kane

12/06/93 17:45 202 745 2804

DECLARATION

I, Frank B. DuRoss, do hereby declare, under penalty of perjury, that:

1. I did not file my application for a new FM station at Whitesboro, New York, for the purpose of reaching or carrying out a settlement agreement.

2. I believe a grant of the Settlement Agreement between myself and Kevin O'Kane is in the public interest since it will simplify the remaining comparative proceeding and expedite the Commission selection of the licensee of the new FM station at Whitesboro.

3. I have not given nor promised to give any money or other consideration to Kevin O'Kane except the \$15,000 we agreed to in the Settlement Agreement.


Frank B. DuRoss

12/7/93
Date

12/06/93 17:48 202 785 2804

SMTHWK/BLNDK-DC

006

DECLARATION

I, Kevin O'Kane, do hereby declare, under penalty of perjury, that:

1. I did not file my application for a new FM station at Whitesboro, New York, for the purpose of reaching or carrying out a settlement agreement.

2. I believe a grant of the Settlement Agreement between myself and Frank B. DuRoss is in the public interest since it will simplify the remaining comparative proceeding and expedite the Commission selection of the licensee of the new FM station at Whitesboro.

3. I have not received nor have I been promised any money or other consideration from Frank B. DuRoss, nor anyone else, except the \$15,000 we agreed to in the Settlement Agreement.

4. I have incurred legitimate and prudent expenses in the preparation, filing and prosecution of my Whitesboro application in excess of \$15,000. Attached to this Declaration is an accounting of such expenses.

Kevin O'Kane
Kevin O'Kane

12/6/93
Date

lp4/whitesbo/12-6.cla

ACCOUNTING OF EXPENSES - WHITESBORO, NY

FCC Filing Fee	\$ 2,030.00
FCC Hearing Fee	6,760.00
Engineering (Craig Fox)	4,500.00
Legal (Jim Oyster)	2,025.00

Total:	\$15,315.00
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Approved by OMB

FEDERAL COMMUNICATIONS COMMISSION

750-0440

Expires 12/31/90

FEE PROCESSING FORM

Please read instructions on back of this form before completing it. Section I MUST be completed. If you are applying for concurrent actions which require you to list more than one Fee Type Code, you must also complete Section II. This form must accompany all payments. Only one Fee Processing Form may be submitted per application or filing. Please type or print legibly. All required blocks must be completed or application/filing will be returned without action.

SECTION I		FCC-Mass Media Services										
APPLICANT NAME (Last, first, middle initial) O'Kane, Kevin		P.O. Box 358195 Pittsburgh, PA 15251-5195										
MAILING ADDRESS (Line 1) (Maximum 66 characters - refer to instruction (2) on reverse of form) 3353 Jenkins Rd.												
MAILING ADDRESS (Line 2) (if required) (Maximum 66 characters)												
CITY Vernon												
STATE OR COUNTRY (if foreign address) New York		ZIP CODE 13476	CALL SIGN OR OTHER FCC IDENTIFIER (if applicable) (new)									
Enter in Column (A) the correct Fee Type Code for the service you are applying for. Fee Type Codes may be found in FCC Fee Filing Guides. Enter in Column (B) the Fee Multiple, if applicable. Enter in Column (C) the result obtained from multiplying the value of the Fee Type Code in Column (A) by the number entered in Column (B), if any.												
(A)	(B)	(C)										
FEE TYPE CODE	FEE MULTIPLE (if required)	FEE DUE FOR FEE TYPE CODE IN COLUMN (A)	FOR FCC USE ONLY									
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\$2,030.00												

SECTION II - To be used only when you are requesting concurrent actions which result in a requirement to list more than one Fee Type Code.												
(A)	(B)	(C)	FOR FCC USE ONLY									
FEE TYPE CODE	FEE MULTIPLE (if required)	FEE DUE FOR FEE TYPE CODE IN COLUMN (A)										
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ADD ALL AMOUNTS SHOWN IN COLUMN C, LINES (1) THROUGH (5), AND ENTER THE TOTAL HERE. THIS AMOUNT SHOULD EQUAL YOUR ENCLOSED REMITTANCE.												
→												
			TOTAL AMOUNT REMITTED WITH THIS APPLICATION OR FILING									
			\$2,030.00									
			FOR FCC USE ONLY									

by DMB
J-0440
as 2/28/93

FEDERAL COMMUNICATIONS COMMISSION
FEE PROCESSING FORM

FOR
FCC
USE
ONLY

Please read instructions on back of this form before completing it. Section I **MUST** be completed. If you are applying for concurrent actions which require you to list more than one Fee Type Code, you must also complete Section II. This form must accompany all payments. Only one Fee Processing Form may be submitted per application or filing. Please type or print legibly. All required blocks must be completed or application/filing will be returned without action.

SECTION I			FCC-Mass Media Services	
APPLICANT NAME (Last, first middle initial) O'Kane, Kevin			P.O. Box 358170 Pittsburgh, PA 15251-5170	
MAILING ADDRESS (Line 1) (Maximum 35 characters - refer to instruction (2) on reverse of form) 3353 Jenkins Rd.				
MAILING ADDRESS (Line 2) (if required) (Maximum 35 characters)				
CITY Vernon				
STATE OR COUNTRY (if foreign address) New York		ZIP CODE 13476	CALL SIGN (new)	OTHER FCC IDENTIFIER 920514MK
Enter in Column (A) the correct Fee Type Code for the service you are applying for. Fee Type Codes may be found in FCC Fee Filing Guides. Enter in Column (B) the Fee Multiple, if applicable. Enter in Column (C) the result obtained from multiplying the value of the Fee Type Code in Column (A) by the number entered in Column (B), if any.				
(A)	(B)	(C)		
FEE TYPE CODE	FEE MULTIPLE (if required)	FEE DUE FOR FEE TYPE CODE IN COLUMN (A)	FOR FCC USE ONLY	
(1) M W R		\$6,760.00		

SECTION II — To be used only when you are requesting concurrent actions which result in a requirement to list more than one Fee Type Code.				
(A)	(B)	(C)		
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(2) <input type="text"/>	<input type="text"/>	<input type="text"/>	FOR FCC USE ONLY	
(3) <input type="text"/>	<input type="text"/>	<input type="text"/>		
(4) <input type="text"/>	<input type="text"/>	<input type="text"/>		
(5) <input type="text"/>	<input type="text"/>	<input type="text"/>		
ADD ALL AMOUNTS SHOWN IN COLUMN C, LINES (1) THROUGH (5), AND ENTER THE TOTAL HERE. THIS AMOUNT SHOULD EQUAL YOUR ENCLOSED REMITTANCE.				
			TOTAL AMOUNT REMITTED WITH THIS APPLICATION OR FILING	
			\$ 6,760.00	

Craig L. Fox
Engineering Consultant
4853 Manor Hill Dr.
Syracuse, NY 13215-1336
315-468-0908
315-468-0904 (fax)

December 6, 1993

Mr. Kevin O'Kane
3353 Jenkins Rd.
Vernon, NY 13476

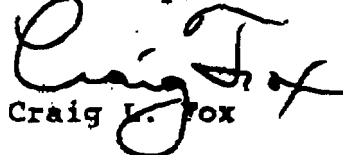
Re: Whitesboro FM

Dear Kevin,

The outstanding amount to date due for my services for the Whitesboro FM application remains at \$4,500.00 which includes recommendation for site location, preparation of the engineering section of the original application and the the subsequent engineering amendment.

Your prompt payment would be greatly appreciated.

Sincerely,


Craig L. Fox

THEY OVERCAME BY THE WORD
OF THEIR TESTIMONY

LAW OFFICES
JAMES L. OYSTER
RT. 1, BOX 803A
CASTLETON, VIRGINIA 22716
(703) 837-4800

FACSIMILE
(703) 837-2148

December 6, 1993

Kevin O'Kane
3353 Jenkins Rd.
Vernon, NY 13476

Dear Kevin:

As you know, I have previously billed you in connection with the Whitesboro proceeding for the following services: Review of competing applications. Preparation of notice. Letter re publication. Notice of appearance. Integration Statement. Production of documents. Petition for leave to amend. Opposition to Motion to Strike.

The following services have been provided since the last billing: Settlement Negotiations. Review of Motion to Enlarge Issues. Opposition to Motion to Compel. Preparation of Declaration Regarding Dismissal of New Horizons. Review of Settlement Documents.

The total amount of billings for this matter is \$ 2,025.00.

Sincerely,


James L. Oyster

CERTIFICATE OF SERVICE

I, Lori Paige DiLullo, a secretary in the law firm of Smithwick & Belendiuk, P.C., certify that on this 8th day of December, 1993, copies of the foregoing were mailed via first class mail, postage pre-paid, to the following:

The Honorable Joseph P. Gonzalez (*)
Administrative Law Judge
Federal Communications Commission
2000 L Street, N.W.
Room 221
Washington, DC 20554

James Shook, Esq. (*)
Hearing Branch
Federal Communications Commission
2025 M Street, N.W.
Room 7212
Washington, DC 20554

Richard J. Hayes, Jr., Esq.
13809 Black Meadow Rd.
Greenwood Plantation
Spotsylvania, VA 22553
Co-Counsel for Kenneth F. Roser, Jr.

J. Richard Carr, Esq.
P.O. Box 70725
Chevy Chase, MD 20813-0725
Co-Counsel for Kenneth F. Roser, Jr.

James L. Oyster, Esq.
Rt. 1, Box 203A
Castleton, VA 22716
Counsel for Kevin O'Kane

(*): By Hand Delivery


Lori Paige DiLullo